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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

BELLSOUTH  
TELECOMMUNICATIONS, LLC  
d/b/a AT&T NORTH CAROLINA and  
d/b/a AT&T SOUTH CAROLINA

Complainant,

v.

DUKE ENERGY PROGRESS, LLC,

Defendant.

Proceeding No.: 20-293

Bureau ID No.: EB-20-MD-004

**DUKE ENERGY PROGRESS, LLC'S OBJECTIONS TO  
AT&T'S FIRST SET OF INTERROGATORIES**

Defendant Duke Energy Progress, LLC ("DEP"), pursuant to Rule 1.730 and in accordance with the Enforcement Bureau's September 22, 2020 Notice of Complaint, submits the following objections to the "First Set of Interrogatories" served by Complainant BellSouth Telecommunications, LLC d/b/a AT&T North Carolina and d/b/a AT&T South Carolina ("AT&T").

**Opposition**

DEP disagrees with AT&T's claim that "[t]he information sought in each Interrogatory is either necessary to the resolution of this dispute, or will become necessary to the resolution of this dispute should Duke Energy Progress seek to rebut the presumption set forth at 47 C.F.R. § 1.1413(b)..." AT&T's First Set of Interrogatories, p. 1. Many of the interrogatories seek information that not only is unnecessary to the resolution of this dispute, but also irrelevant to any claim or defense in this proceeding, as set forth more fully below.

### **General Objections**

DEP objects to AT&T's First Set of Interrogatories to the extent that they violate the scope, purpose and limitations set forth in Rule 1.730.

DEP objects to AT&T's First Set of Interrogatories insofar as they, in essence, ask for DEP's full, substantive response to the complaint within the deadline for responding to interrogatories.

DEP objects to AT&T's First Set of Interrogatories to the extent that they seek information ~~pertaining to the 2015 and 2016 "rental years."~~ AT&T's Complaint has only placed the 2017, 2018 and 2019 "rental years" at issue. Accordingly, information pertaining to the 2015 and 2016 "rental years" is not relevant to any claim or defense in this proceeding, nor is it necessary to the resolution of this dispute.

### **Objections to Definitions**

DEP objects to the definition of "Duke Energy Progress" on the grounds that it is overly broad and unduly burdensome and, if applied literally within each interrogatory, would seek information that is protected by the attorney-client privilege and work-product doctrine, would thwart the purpose of consulting and testifying experts, and would seek information that is not relevant to any claim or defense in this proceeding. AT&T defines "Duke Energy Progress" to mean ~~"Duke Energy Progress, LLC and any persons associated with it, including but not limited~~ to, each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, attorneys, successors, predecessors, representatives, investigators, experts, employees, ex-employees, consultants, representatives and others who are in possession of, or who may have obtained, information for or on behalf of the above-mentioned persons or entities." See AT&T's First Set of Interrogatories, pp. 2-3. There are many things improper about

the scope of this definition, but chief among them is that AT&T's definition of "Duke Energy Progress" would include, for example, Duke Energy Florida (against whom AT&T has filed a separate pole attachment complaint), as well as other Duke Energy operating companies and affiliates, each of which is a distinct legal entity and most of which operate within completely distinct jurisdictions.

DEP objects to the definition of the term "identify" on the grounds that it would render each interrogatory in which the term is used vague, overly broad, unduly burdensome and not reasonably calculated in scope. For example, the definition of "identify" when "referring to a document" not only would require type, author, addressee, date and subject but also would require "the name of any person in whose custody the document is kept in the usual course of business." AT&T's First Set of Interrogatories, p. 3. As another example, the definition of "identify" when "referring to data" not only would require type, vintage, and location of collection but also would require "the rules or guidelines governing the collection of the data, and all facts, figures, measurements, and other data collected and analyses performed." *Id.*

### **Objections to Individual Interrogatories**

**INTERROGATORY NO. 1:** Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Florida contends is "just and reasonable" for AT&T's use of Duke Energy Progress's poles under 47 U.S.C. § 224(b). Include in your response all facts on which you rely for your contention that the annual pole attachment rental rates are "just and reasonable" under 47 U.S.C. § 224(b), the formula, calculations, inputs, assumptions, and source data used to calculate each annual pole attachment rental rate, and the corresponding pole attachment rental rate that would apply to Duke Energy Progress's use of AT&T's poles.

**OBJECTION:** DEP objects to this interrogatory as being overly broad, unduly burdensome and, if taken literally, would require DEP to answer the complaint within the deadline established for responses to interrogatories. Subject to and without waiving this objection, in its October 14, 2020 interrogatory responses, DEP intends to state the “just and reasonable” rate for AT&T’s use of DEP’s poles from 2017, forward, and to respond, in summary fashion, to the request to state “all facts” which support DEP’s position. DEP will provide further facts in response to this interrogatory with its November 13, 2020 answer to the complaint. DEP will further supplement this response as additional facts are revealed through the course of discovery.

**INTERROGATORY NO. 3:** State the rates, terms, and conditions of all Joint Use Agreements and License Agreements with Duke Energy Progress that were in effect at any time from the 2015 rental year forward. Include in your response the name of the entity that is a party to the Joint Use Agreement or License Agreement with Duke Energy Progress and the dates on which the Joint Use Agreement or License Agreement with Duke Energy Florida was in effect. In lieu of quoting each rate, term, and condition from each Joint Use Agreement and License Agreement, Duke Energy Progress may produce a copy of each Joint Use Agreement and License Agreement.

**OBJECTION:** DEP objects to this interrogatory as overly broad and unduly burdensome insofar as, if taken literally, it would require a recitation of each and every provision in each of the approximately 50 agreements that will be identified in response to this interrogatory. Further, though DEP does not take exception to the relevance of CATV and CLEC pole license agreements (and, more specifically, how the provisions of those very basic agreements compare to the vastly more favorable access terms and conditions given to AT&T under the joint use agreement), the

provisions of DEP's joint use agreements with other incumbent local exchange carriers are not relevant to any claim or defense in this proceeding. Finally, DEP objects to producing any executed joint use agreements or pole license agreements on grounds that such agreements are confidential and contain proprietary information that cannot be produced to third parties. Subject to and without waiving these objections, DEP intends to provide redacted, exemplar agreements with a CATV licensee, a CLEC licensee and a wireless licensee.

**INTERROGATORY NO. 4:** Beginning with the 2015 rental year, state the annual pole attachment rental rate that Duke Energy Progress charged each entity identified in response to Interrogatory 2, the number of poles or attachments for which the pole attachment rental rate was charged, and whether the entity uses Duke Energy Progress's poles pursuant to a License Agreement or a Joint-Use Agreement. Include in your response the formula, calculations, inputs, assumptions, and source data used to calculate each pole attachment rental rate charged and state whether the rate was charged on a per-pole, per-attachment, or other basis and whether the rate was paid.

**OBJECTION:** To the extent that it seeks information about the cost sharing arrangements between DEP and other incumbent local exchange carriers ("ILECs") with whom DEP has joint use agreements, DEP objects to this interrogatory on grounds that it seeks information that is not relevant to any claim or defense in this proceeding. By definition, there is only one ILEC in any geographic area; therefore, AT&T does not compete against any of the other ILECs with which DEP has joint use agreements. DEP further objects to producing information about the cost sharing arrangements in other joint use agreements on grounds that some of those cost-sharing arrangements are the result of confidential settlements reached following the effective date of the

Commission's assertion of jurisdiction over the rates paid by ILECs to attach to electric utility poles in the 2011 Pole Attachments Order. Subject to and without waiving these objections, DEP intends, in its October 14, 2020 response to the interrogatories, to identify the rates paid by each and every CATV, CLEC and wireless licensee, and to identify the number of poles or attachments for which the rate was charged. DEP also intends to provide the "backup" calculations for these rates, where applicable.

**INTERROGATORY NO. 5:** With respect to each License Agreement identified in response to Interrogatory 3, identify any advantage or benefit that Duke Energy Progress contends AT&T receives over and above those provided to the attaching entity. Include in your response, beginning with the 2015 rental year, a quantification of the annual monetary value of each such claimed advantage or benefit expressed on a per-pole basis, the language from each License Agreement that establishes or supports the claimed advantage or benefit, and all data, formulas, calculations, inputs, assumptions, and source data used to quantify the monetary value of each claimed advantage or benefit.

**OBJECTION:** See objections to interrogatory number 3 above. Subject to and without waiving these objections, DEP intends to fully quantify the advantages to AT&T under its joint use agreement (or at least those advantages that demonstrate the reasonableness, if not favorability, to AT&T as compared to DEP's CATV and CLEC licensees).

**INTERROGATORY NO. 6:** Beginning with the 2015 rental year, for each claimed advantage or benefit identified in response to Interrogatory 5, state by year the amount of money that Duke Energy Progress collected from each entity identified in response to Interrogatory 2

concerning that competitive benefit. Include in your response all formulas, calculations, inputs, assumptions, and source data used to invoice these amounts.

**OBJECTION:** To the extent this interrogatory seeks information about, or a quantification of, “each claimed advantage or benefit” that other ILECs enjoy under their joint use agreements with DEP, DEP refers AT&T to the objections raised in response to interrogatory number 4 above

**Dated:** September 29, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2020, a true and correct copy of Duke Energy Progress, LLC's Objections to AT&T's First Set of Interrogatories was filed with the Commission via ECFS and was served on the following (service method indicated):

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